

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
v.	§	Case No. 4:15-CR-318-3
ANN ANYANWU,	§	Judge Alfred Bennett
Defendant.	§	

FrcRp 30(d) Defendant’s Objections to the Court’s Jury Charge
Counts 2, 4, and 5—HEALTH CARE FRAUD
18 U.S.C . §§ 1347 and 2

COMES NOW DEFENDANT ANN ANYANWU by and through her attorney Vivian R. King, and, pursuant to the FRCrP 30(d) files three Objections to the Court’s Final Jury Instruction. The two objections are as follows: (1) the second sentence in the definition of ‘WILLINGLY’ found on page 16 and (2) the Health Care Fraud application paragraphs for Counts 2, 4, and 5 and requests this Honorable Court use the Health Care Fraud jury instruction and definition of “willingly” found in the 5th Circuit Pattern Jury Charge 2015.

Specific Objections

Objection No. 1: Defendant Objects to the wording of jury instruction on the Health Care Fraud for Counts 2, 4, and 5 as a **Misstatement of the Law**. Please refer to the **Final Instruction page 23** for Counts 2, 4, and 5—Health Care Fraud 18 U.S.C. §§ 1347 and 2. (Exhibit “A”). The “*specific intent*” language is *omitted* among other requirements that lowers the government’s burden of proof. In addition, the

“knowingly and willingly” language has been *omitted* from the *First* element the government must prove beyond a reasonable doubt.

Objection No. 2: Defendant Objects to the second sentence in the court’s definition of “WILLINGLY” as a **Misstatement of the Law**. Please refer to the Final Instruction page 16 (Exhibit “A”). The correct definition is found in the 5th Circuit Pattern Jury Charge with is attached herein as Exhibit “B” which has also been typed below.

The Court’s “Final Instruction” was taken from Government’s Jury Charge filed in Document #120 (page 16). The Defendant objects as a misstatement of the law. The court’s instruction omits the *“specific intent”* mental state and *“knowingly and willfully”* mental state that Congress requires for a conviction under the Health Care Fraud statute. In addition the definitions found in the 5th Circuit Pattern Jury Charge have been moved such that the instructions are hard to follow.

REQUESTED JURY INSTRUCTION

The Defendant respectfully requests that this Honorable Court use the 5th Circuit Pattern Jury Instruction for Health Care Fraud for Counts 2, 4, and 5 which should read as follows:

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the defendant knowingly and willfully executed or attempted to execute a scheme or artifice to defraud a health care benefit program, Medicare, to obtain money or property from a health care benefit program, Medicare, by means of false or fraudulent pretenses, representations, or promises in connection with the delivery of or payment for health care benefits, items, or services;

Second: That the defendant acted with a specific intent to defraud a health care benefit program;

Third: That the false or fraudulent pretenses, representations, or promises that the defendant used were material; and

Fourth: That the operation of the health care benefit program affected interstate commerce.

The word “knowingly” as that term is used in these instructions, means that the act was done voluntarily and intentionally, not because of mistake or accident.

The word “willfully” as that term is used in these instructions, means that the act was committed voluntarily and purposefully, with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or disregard the law.

A “scheme or artifice” means any plan, pattern, or course of action involving a false or fraudulent pretense, representation, or promise intended to deceive others in order to obtain something of value, such as money, from the institution to be deceived.

A “health care benefit program” is defined as “any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service, for which payment may be made under the plan or contract.”

A defendant acts with the requisite “intent to defraud” if the defendant acted knowingly and with the specific intent to deceive, ordinarily for the purpose of causing some financial loss to another or bringing about some financial gain to the defendant.

The government does not have to prove that the defendant had actual knowledge of or specific intent to violate the applicable health care fraud statutes.

A representation is “false” if it is known to be untrue or is made with reckless indifference as to its truth or falsity. A representation is also “false” when it constitutes a half truth, or effectively omits or conceals a material fact, provided it is made with intent to defraud.

A false representation is “material” if it has a natural tendency to influence, or is capable of influencing, the institution to which it is addressed.

“Interstate commerce” means commerce or travel between one state, territory, or possession of the United States and another state, territory, or possession of the United States, including the District of Columbia. “Commerce” includes travel, trade, transportation, and communication. Only a minimal effect is required in order to show that the health care benefit program “affected commerce.” Proof that the money obtained through execution of the scheme was paid through a financial institution insured by the FDIC, for example, is sufficient to establish that the activity “affected commerce.”

It is not necessary that the government prove all of the details alleged in the indictment concerning the precise nature of the alleged scheme, or that the alleged scheme actually succeeded in defrauding someone. What must be proven beyond a reasonable doubt is that the accused knowingly executed or attempted to execute a scheme that was substantially similar to the scheme alleged in the indictment.

Respectfully submitted,
/s/ Vivian R. King
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CERTIFICATE OF SERVICE

I, Vivian R. King, hereby certify that a true and correct copy of the foregoing instrument was emailed to the Assistant U.S. Attorneys William Chang and Scott Armstrong via email on July 17, 2016.

/s/ Vivian R. King
VIVIAN R. KING